IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 27498 of 2005(W)

PETITIONERS:

1. **MUNESH K.G.,**
   APPILAZHIKAM, P.O. CHANDANATHOPE,
   KOLLAM-691014.

2. **JAINAMMA P.K.,**
   VETTIPARAMBIL HOUSE, CHANNANIKKADU P.O.,KOTTAYAM.

3. **JAYARAM J.,**
   JAYABHAVAN, KUMANNOOR, KIDANGOOR P.O., KOTTAYAM.

4. **SMT. SOJY SUSAN KURIAN,**
   NARAYANA SADANAM, S.H. MOUNT P.O., KOTTAYAM-6.

5. **SMT.P.V. GEETHAKUMARI,**
   MALLICHIRAYIL, P.O. MARIATHURUTH, KOTTAYAM.

BY ADV. SRI.S.EASWARAN

RESPONDENTS:

1. **THE MAHATMA GANDHI UNIVERSITY,**
   PRIYADARSHINI HILLS, KOTTAYAM-686562,
   REPRESENTED BY ITS REGISTRAR.

2. **THE VICE-CHANCELLOR,**
   MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS,
   KOTTAYAM-686562.

3. **THE SYNDICATE OF THE MAHATMA GANDHI**
   UNIVERSITY, P.D. HILLS, MAHATMA GANDHI UNIVERSITY,
   KOTTAYAM, REPRESENTED BY ITS REGISTRAR.

4. **SHRI M.P. DILEEP KUMAR,**
   CLERICAL ASSISTANT, MAHATMA GANDHI UNIVERSITY,
   P.D. HILLS, KOTTAYAM-686562.

5. **SHRI P.I. ASHARAF -DO- -DO-.**

6. SMT. T.D.RAJAMMA, -DO- -DO-.

7. SMT.V.K. KAMALAKSHI -DO- -DO-.

*** ADDL.RESPONDENTS 8 TO 10 ARE IMPLEADED.**

8. JOSE GEORGE, ASSISTANT GR.II,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, KOTTAYAM.

9. JOB.T.G., ASSESSEMENT GR.II,
MAHATMA GANDHI UNIVERSITY
PRIYADARSHINI HILLS, KOTTAYAM.

10. K.M. THOMa, ASSISTANT GR.II,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS , KOTTAYAM.

*** ADDL.R8 TO R10 ARE IMPLEADED AS PER ORDER DT. 21.12.05 IN I.A. NO.18876/05.**

BY ADV. SRI.TOM JOSE
SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.27498/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPOINTMENT ORDER ISSUED BY THE 1ST RESPONDENT TO THE 2ND PETITIONER.

EXT.P1(a);- COPY OF THE APPOINTMENT ORDER DT.27.8.96 ISSUED BY THE 1ST RESPONDENT TO THE 3RD PETITIONER.

EXT.P1(b):- COPY OF THE DO. DO. DT.2.4.97 ISSUED BY THE 1ST RESPONDENT TO THE 4TH PETITIONER.

EXT.P2:- COPY OF THE STATEMENT OF RELINQUISHMENT SUBMITTED BY JOB T.F ON 21.3.98,.

EXT.P3:- COPY OF THE OFFICE ORD DT.18.4.98 ISSUED BY THE 1ST RESPONDENT .

EXT.P4:- COPY OF THE COMMON SENIORITY LIST OF DIRECTLY RECRUITED LAB ASSISTANT AND CLASS IV PROMOTEE LAB ASST.

EXT.P5:- COPY OF THE REPRESENTATION DT.19.9.01 SUBMITTED BY THE PETITIONERS AND OTHERS BEFORE THE 2ND RESPONDENT .

EXT.P6:- COPY OF THE ORDER D.T . 22.7.03 COMMUNICATED TO SHRI.N.BASHEER AS PER LETTER DT.24.7.93.

EXT.P7:- COPY OF THE JUDGMENT DT.17.8.04 IN WP(C) NO.20609 / 04.

EXT.P8:- COPY OF THE MEMO DT.29.12.04 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P9:- COPY OF THE ORDER NO.AD.A3-1-3082/2000 DT. 31.12.04 ISSUEDBY THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE RESOLUTION OF THE 3RD RESPONDENT TAKEN AT THE MEETING HELD ON 17.8.05.

EXT.P11:- COPY OF THE ORDER DT.9.9.05 OF THE 1ST RESPONDENT AND RECEIVED BY THE PETITIONERS ON 30.9.05.

EXT.P12:- COPY OF THE NOTIFICATION NO.2653/87/AII (3)/ADMN. DT.19.3.90 ISSUED BY THE 1ST RESPONDENT.

EXT.P13:- COPY OF THE JUDGMENT DT.11.2.97 IN OP. NO.924/95.

EXT.P14:- COPY OF THE MEMO NO.AD.A.3/1/9064/95/ADMN. DT.4.12.97 ISSUED BY THE IST RESPONDENT.

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EXT.R4(a):- COPY OF THE COMMON SENIORITY LIST OF THE CLASS IV EMPLOYEES OF THE 1ST RESPONDENT UNIVERSITY AS ON 11.7.97.

EXT.R4(b):- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT. 11.2.97 IN OP. NO.924/95.

EXT.R4(c):- COPY OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT UNIVERSITY DT.19.3.90.

EXT.R4(d):- COPY OF THE ORDER OF THE 1ST RESPONDENT UNIVERSITY DT.19.7.99.

EXT.R4(e):- COPY OF THE TRANSFER OFAND POSTING ORDER OF THE 6TH RESPONDENT HEREIN AND ONE K.J.JOHN VIDE ORDER NO.A.III/9064/1/95/ADMN. DT.4.2.02.

EXT.R4(f):- COPY OF THE OPTION SOUGHT BY THE UNIVERSITY IN THE CASE OF THE 6TH RESPONDENT DT.4.12.97.

EXT.R4(g):- COPY OF THE LETTER SUBMITTED BY THE 6TH RESPONDENT DT.4.12.97.

EXT.R4(h):- COPY OF THE ORDER PASSED ON 8.9.05 BY THE ASSISTANT REGISTRAR ADMINISTRATION.

EXT.R4(i):- COPY OF THE ORDER DT.9.9.05 OF THE ASSISTANT REGISTRAR II/ADMINISTRATION.

EXT.R4(j):- COPY OF THE SANCTION ORDER OF THE UNIVERSITY DT.13.9.05.

EXT.R4(k):- COPY OF THE REPRESENTATION PREFERRED BY RESPONDENTS DT.15.7.05.

EXT.R4(l):- COPY OF THE SANCTION ORDER ACCORDED BY THE VICE CHANCELLOR REGARDING THE PROMOTION OF QUALIFIED CLERICAL ASSISTANTS AS AST. GR.II DT.13.9.05.

EXT.R8(a):- COPY OF THE ORDER NO.9064/95(1) A-III/ADMN.(I) DT.9.12.97 ISSUED BY THE M.G.UNIVERSITY.

EXT.R8(b):- COPY OF THE ORDER NO.9064/95(1) AIII/ADMN DT.18.2.2000 ISSUED BY THE M.G.UNIVERSITY (EXTRACT).

EXT.R8(c):- COPY OF THE ORDER NO.517/99(1)/A-III/ADMN. DT.4.2.99 ISSUED BY THE M.G.UNIVERSITY.

EXT.P8(d):- COPY OF THE ORDER NO.AD.A1.1.10/01 DT.13.9.05 ISSUED BY THE M.G.UNIVERSITY.

EXT.R8(a):- COPY OF THE RANK LIST PUBLISHED BY THE 1ST RESPONDENT UNIVERSITY WHICH WAS APPROVED ON 23.7.05.

/TRUE COPY/

K.M.JOSEPH, J.

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WP.(C) No.27498 OF 2005

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Dated this the 26th day of March, 2007.

JUDGMENT

The case of the petitioner in brief is as follows:

Petitioners were appointed to the post of Laboratory Assistants on various dates. They were appointed in pursuance of Ext.P12 notification. Many of the Class IV employees clamored for promotion to the post of Laboratory Assistants. This court on writ petitions filed directed to prepare a common seniority list of Class IV employees and to fill up the post of Laboratory Assistants by way of promotion. Options were called for by the University from Class IV employees who opted for the post of Clerical Assistants where vacancies are not existing, in such cases options were called for from the employees for opting to the post of Laboratory Assistants. Number of Class IV employees opted to come over as Laboratory Assistants. But it is stated that certain other employees who have not expressed their willingness to come over to the post of Laboratory Assistant had relinquished their claim. Ext.P2 is one copy of such statement.

Subsequently, number of employees were promoted as Laboratory Assistants. Ext.P4 is the seniority list of non-teaching staff to show that directly recruited Laboratory Assistants were ranked above the promotee Laboratory Assistants. The promotee Laboratory Assistants ranked below the petitioners represented to the Vice-Chancellor complaining that they would not get promotion and were stagnated and many of their juniors in the common seniority list of Class IV employees were later promoted as Clerical Assistants and were given further promotion. First respondent granted category change only for giving them a consequential promotion to the cadre of Assistant Grade II. It is stated that after Ext.P4 several persons included in Ext.P4 seniority list were promoted and were given further promotion as Assistant Grade II. Petitioners have filed Ext.P5 representation. One of the signatories approached this court and filed a writ petition and this court directed consideration of the representation. Ext.P6 is the copy of the said communication rejecting their representation. The petitioners learnt that the Syndicate in the meantime met and considered the representation of respondents 4 to 7 for promotion to the

post of Assistant Grade II and took the decision to promote them. Formal orders were not issued. Respondents 4 to 7 are ranked below the petitioners in Ext.P4 seniority list. Ext.P6 was challenged before this court. When the matter came up, it was submitted on behalf of the respondent University that the matter is being reconsidered. By Ext.P7 judgment this court directed fresh orders to be passed and Ext.P6 was quashed for that purpose. Pursuant to the judgment, notice was issued to the petitioners informing that the Vice Chancellor has ordered to conduct a hearing. Petitioners were directed to be present before the Registrar. They appeared. But hearing was adjourned. Ext.P8 memo was issued again requesting appearance before the Registrar. Immediately after Ext.P8 was issued, Ext.P9 order was issued granting promotion to the senior most Peon. It was after a Contempt of Court Case was filed and in that proceedings Ext.P10 minutes of the third respondent was produced. In Ext.P10 it is stated as follows:

> "As per the direction of the Hon'ble High Court of Kerala the Syndicate considered the entire matter and hearing report in detail, and resolved the following:
>
> 1. To treat the direct recruitee Laboratory Assistants as a

separate technical category and to grant them time bound/ratio promotion as has been done to other technical categories of employees, since they are recruited as Class III officials in the technical category of employees with specific technical qualifications.

2. To cancel the seniority list prepared by combining the directly recruited Laboratory Assistants and those promoted as Laboratory Assistants and to prepare a separate seniority list for the direct recruitee Laboratory Assistants.

3. To designate the Laboratory Assistants promoted from the seniority list as Clerical Assistants w.e.f., the date of their promotion as Laboratory Assistants considering the fact that both the posts carry identical scale of pay and that the promotees are included in the common seniority list as Last Grade Servants (Grade II).

4. To reckon the service put in by eligible promotees from the common seniority list of Class IV employees as Laboratory Assistants/Clerical Assistants as qualifying service for promotion as Assistant Grade II.

5. To authorise the Vice-Chancellor to dispose of the pending cases of promotion as Laboratory Assistants/Clerical Assistants/Assistant Grade II in the common seniority list in conformity with the decision of the Syndicate."

2. Sri. Easwaran, learned counsel appearing for the petitioners would contend that the petitioners were recruited earlier to respondents 4 to 7 being promoted and this is recorded in Ext.P4 seniority list also. They were discharging the same duties. Their pay scale was the same. Both belong to the cadre of Laboratory Assistants. They were included in a common seniority list. Thus they were fused into a single category. In such circumstances Exts.P10 and P11 would show that they were being subjected to hostile discrimination as equals were being treated unequally. He relied on the decisions of the Apex Court reported in **Roshan Lal v. Union of India** (AIR 1967 SC 1889) and **State of J. & K. v. T.N. Khosa** (A.I.R. 1974 SC 1). In **Roshan Lal's** case the court held as follows:

> "To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C'."

In **State of Jammu & Kashmir's case** the court held as follows:

> "Thus all that Roshan Lal's case lays down is that direct recruits and promotees lose their birth-marks on

> fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again."

Therefore it is contended that Exts.P10 and P11 cannot be sustained. It is also contended that by Ext.P10 without notice to the petitioners Ext.P4 seniority list is sought to be undone. It is also pointed out that those employees who have been promoted to the post of Laboratory Assistant has to necessarily relinquish their promotion to the post of Clerical Assistants. It is contended that the petitioners are entitled to be treated on par with Laboratory Assistants, who were promoted and they cannot be denied the benefit which was being given to the promotee Laboratory Assistants. Petitioners are in possession of the qualification notified in Ext.P12. The fact that respondents 4 to 7 were promoted as Laboratory Assistants even if it is without the qualifications held by the petitioners, it can only be treated as a relaxation of the qualifications in respect of respondents 4 to 7, it is contended. It is also pointed out that

it is not as if difference in qualifications is stated to be the basis of Ext.P10. It is further contended that Ext.P10 is violative of the direction of this court as this court had directed the University to consider, and Ext.P10 order is passed by the Syndicate. It was the Registrar, who was directed to take a decision,it is contended.

3. Per contra, it is contended by the learned counsel for the respondent University that directly recruited Laboratory Assistants belong to Class III as per the notification and they are appointed to do the work of Laboratory Assistants only. The promotion given to Class IV employees as Laboratory Assistants are not based on the qualifications specified for Laboratory Assistants though they were listed together under the designation Laboratory Assistants. The nature of the work of Laboratory Assistants and Clerical Assistants/Assistant Grade II are entirely different, it is contended. The category of Clerical Assistants/Assistant Grade II cannot be granted as they belong to a separate stream, it is further contended.

4. It is pointed out by the learned counsel for the University Sri. V.A. Muhammed that after in terms of Ext.P10 seniority list is

cancelled and a separate list for direct recruitee Laboratory Assistants is issued, the very basis of the petitioners' contention based on Ext.P4 will lose its very basis. It is pointed out that the Syndicate has decided to treat both the categories as separate. Direct recruitee Laboratory Assistants are to be treated as separate technical category. It is pointed out that by Ext.P10 they were given time bound/ratio promotion as they were recruited in the technical category in Class III with specific technical qualifications.

5. A counter affidavit has been filed on behalf of respondents 4 to 7 also. It is pointed out that the sixth respondent was given category change as per Ext.R3(b). Likewise, respondents 4, 5 and 7 were also given such change. It is further stated that as regards category change the University sought option from the incumbents who were entitled for promotion from Class IV vide Ext.R4(f). Ext.R4(g) is stated to be the option given by the sixth respondent. Ext.R4(d) is stated to be an order dated 19.7.1999 appointing nine incumbents including respondents 5, 6 and 7 as Laboratory Assistants.

6. It is to be noted that petitioners were recruited directly as Laboratory Assistants in pursuance of Ext.P12 notification. No doubt there were qualifications prescribed. As far as respondents 4 to 7 are concerned, they were appointed in Class IV category. This court by Ext.R4(b) judgment declared that members of Class IV are entitled to be considered for promotion to the post of Laboratory Assistants/Clerical Assistants and Ronio Operators. This judgment is dated 11.2.1997. This court had also directed preparation of seniority list of Class IV employees and promotion was to be made as per the quota fixed for promotion within two months from the date of the judgment. It is thereafter that Ext.P4 seniority list was prepared. A perusal of Ext.P4 seniority list would show that the directly recruited Laboratory Assistants are ranked above the promotee Laboratory Assistants. Ext.R4(d) though dated 19.7.1999 would show that respondents 5, 6 and 7 were promoted on 9.12.1997 as Laboratory Assistants. Ext.R4(d) evidences declaration of probation with effect from the dates mentioned in the year 1998. Ext.R4(f) is dated 4.12.1997 and it is stated to be given to the sixth respondent asking

her choice for promotion between the posts of Clerical Assistant and Lab Assistant. Going by Ext.R4(g), she has opted for the post of Clerical Assistant. But there are no like documents produced in regard to respondents 4, 5 and 7. Whatever that be, the fact remains that they were promoted as Laboratory Assistants. After they were promoted apparently they were doing the same job as was being done by the direct recruits. They were paid the same remuneration besides forming part of a seniority list, namely Ext.P4.

7. Shri S. Easwaran, learned counsel for petitioners, no doubt, relied on the Judgment of the Apex Court in **Roshan Lal** v. **Union of India** (AIR 1967 SC 1889). It is pertinent to note the facts of that case. Vacancies in Grade D of Train Examiners were filled up by direct recruits, i.e. Apprentice Train Examiners and by promotees from the class of skilled Artisans in the ratio of 50:50. Promotion from the said Grade to Grade C was to be made on the basis of seniority -cum-suitability. The Railway Board in 1965 issued a Notification providing that 80 per cent of the vacancies in Grade C would be filled up from the class of Apprentice Train Examiners recruited on and after April 1st,

1966 and the remaining 20 per cent from among the Train Examiners in Grade D. The Notification further provided for accommodating the Apprentice Train Examiners absorbed before 1966 en bloc in the 80 per cent of vacancies without selection. In regard to 20 per cent of the remaining vacancies, promotion was on the basis of selection and not on the basis of seniority -cum- suitability. The petitioner, Shri Roshan Lal was a skilled Artisan who was confirmed as Train Examiner Grade D challenged that part of the Notification giving favourable treatment to Apprentice Train Examiners. It is in the context of that case that the Court has found that recruits from both the sources from Grade D were integrated into one class and no discrimination could, therefore, be made in favour of the recruits from one source in the matter of promotion to Grade C. The petitioners have no case that they were ever entitled to promotion to the post of Assistant Grade II or to become Clerical Assistants. In **Roshan_Lal**'s case supra, prior to the Notification, persons from both categories, namely direct recruits and skilled Artisan were eligible to promotion on the basis of the principle of seniority -cum- suitability. In fact, there is no prayer in the Writ

Petition to appoint them as Clerical Assistants. They would seek appointment to the cadre of Assistant Gr.II. But, the post of Laboratory Assistant is not a feeder category for promotion to the post of Assistant Grade II. Petitioners do not challenge the category change given to the promotee Laboratory Assistant as Clerical Assistant. There is no prayer that the petitioners should be given category change as Clerical Assistants. Whatever that be, it is to be noted that unlike in the case of **Shri Roshan Lal,** never were the petitioners eligible under any Rules or Executive Order issued by the employer for any category change as Clerical Assistant or for promotion to the post of Assistant Gr.II. No doubt, in Exts.P10 and P11, Ext.P4 seniority list is done away with and two separate seniority lists are to be prepared. There is no case of any change of the seniority position inter se between directly recruited Laboratory Assistants. At any rate it is to be noted that several promotee Lab Assistants in Ext.P4 are not made parties and yet Exts.P10 and P11 are sought to be quashed. I do not also see any merit in the contention that as per Ext.P7 it was the Registrar who was to take the decision. I do not think Ext.P7 judgment, on a consideration of the

same bears out the said contention. Ext.P11 is issued by the Registrar following Ext.P10. Ext.P7 judgment must be read as meaning that the competent organ in the University was to take the decision.

8. The relief sought for in prayer (b) is to restrain respondents 1 to 3 from effecting promotion to the post of Assistant Gr.II by posting juniors to the petitioners in Ext.P4 seniority list. All the juniors in Ext.P4 seniority list are not before the Court. The further prayer is to compel respondents 1 to 3 to post the petitioners as Assistants Grade II in preference to respondents 4 to 7 and similarly situated persons. The similarly situated persons are made parties. In such circumstances, I feel that the petitioners may not be entitled to reliefs in this Writ Petition.

The writ petition is dismissed.

sb. **(K.M. JOSEPH, JUDGE)**

K.M.JOSEPH, JJ.

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